

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Robert David Hanson

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on August 14, 2007, for a prehearing conference at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Notice of Prehearing Conference, dated June 19, 2007, and by letter from the undersigned to the parties dated July 10, 2007, notifying them of a change in date and time.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). The Respondent, Robert David Hanson, 18574 Everest Path, Farmington, MN 55024, did not appear in person or by counsel. The record closed upon the Respondent's default on August 14, 2007.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Commissioner Steve Sviggum, ATTN: Nancy Leppink, Director of Legal Services, Minnesota, Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the

expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

STATEMENT OF ISSUE

1. Did Respondent engage in unlicensed residential building contractor activity, in violation of Minn. Stat. §326.84, subds. 1 and 1b (2006)?

2. Did the Respondent violate the May 30, 2001, Cease and Desist Order issued by the Commissioner, in violation of Minn. Stat. § 326.91, subd. 1 (5) (2006)?

3. Did the Respondent receive payment in full for the Honsa project and fail to pay subcontractors on that project, in violation of Minn. Stat. § 326.91, subd. 1 (8)(2006)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 20, 2007, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, Statement of Charges, and Notice of Appearance, was sent via first class to Robert David Hanson, 18574 Everest Path, Farmington, MN 55024, as appears from the Affidavit of Service by First Class Mail, on file herein. The mailing was not returned to the Department as undeliverable.

2. On July 10, 2007, the undersigned sent a notice to the parties rescheduling the date and time of the prehearing conference to August 14, 2007. The mailing was not returned to the Office of Administrative Hearings.

3. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

4. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed disciplinary action may be upheld.

5. Because Respondent failed to appear, he is in default.

6. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. The Respondent engaged in unlicensed residential building contractor activity, in violation of Minn. Stat. §326.84, subds. 1 and 1b (2006).

7. The Respondent violated the May 30, 2001, Cease and Desist Order issued by the Commissioner, in violation of Minn. Stat. § 326.91, subd. 1 (5) (2006).

8. The Respondent received payment in full for the Honsa project and failed to pay subcontractors on that project, in violation of Minn. Stat. § 326.91, subd. 1 (8)(2006).

9. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Labor and Industry take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 27th day of August, 2007.

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default (not recorded)